

specific services;¹⁰⁸ (iv) the exclusion of so-called "below-cost" services;¹⁰⁹ (v) the substitution of weighted average rates for rate schedules;¹¹⁰ (vi) the exclusion of package offerings;¹¹¹ and (vii) eliminating the wholesale reduction for "bulk" offerings.¹¹² The FCC should expressly reject each and every one of these proposed restrictions. Singly or in the aggregate, they will permit ILECs to manipulate their local exchange services and rates to prevent competitive entry into portions or all of the local market.¹¹³

The Department of Justice also urges the FCC to clarify that state commissions may authorize only one restriction, that which Congress expressly permitted for services which are limited by law to a specific class of subscribers.¹¹⁴ The Department recognized that the ILECs would use any loopholes, such as excluding promotional offerings from resale or withdrawing services, as a "means for nullifying or at least diluting the competitive significance

¹⁰⁸ E.g., USTA Comments at 72.

¹⁰⁹ E.g., U S West Comments at 65-66; GTE Comments at 45.

¹¹⁰ E.g., Ameritech Comments at 58.

¹¹¹ E.g., SBC Comments at 72.

¹¹² E.g., SBC Comments at 69; GTE Comments at 49.

¹¹³ As but one example of how an ILEC could manipulate these restrictions to the competitive detriment of new entrants, an ILEC who can offer a graduated rate schedule to end-users while offering only a "weighted average" rate to a reseller could construct offerings that effectively prevent resellers from competing for the business of the largest customers who qualify for the lowest rate. See Ameritech Comments at 58.

¹¹⁴ DOJ Comments at 53-56. CompTel agrees with the DOJ that the FCC is empowered to determine that residential services may reasonably be restricted to residential users.

of the resale requirement.”¹¹⁵ The Department urged particular vigilance regarding the withdrawal of services to ensure that it is not a “tactic to eliminate offerings that appear to provide an economical means for new entrants to become established in the local exchange markets.”¹¹⁶ U S West’s effort to withdraw Centrex service is an especially blatant example of this anticompetitive tactic.

In addition, the FCC should confirm that ILECs may be required to modify the terms and conditions of their retail offerings whenever they would impose an unreasonable restriction upon resale.¹¹⁷ Just because an ILEC has decided to impose conditions and restrictions upon end-user customers does not entail that such conditions and restrictions are reasonable for wholesale customers. The FCC should clarify that Section 251(c)(4), in directing the ILECs “not to impose unreasonable or discriminatory conditions or limitations on the resale” of their local exchange services, removes any arguable presumption that ILECs are entitled to impose the same terms and conditions upon wholesale customers as they impose upon their retail end-user customers.

Third, the Commission must ensure that ILECs establish the operating systems and “back office” support systems necessary for co-carriers to provide effective service. As

¹¹⁵ DOJ Comments at 54.

¹¹⁶ DOJ Comments at 55.

¹¹⁷ For example, an ILEC should not be able to impose restrictions upon Centrex customers, such as contiguous property requirements, which unreasonably restrain resale. See SBC Comments at 76.

CompTel discussed in its comments¹¹⁸ these include systems to support billing and presubscription.

**VI. THE FCC SHOULD ADOPT RULES TO IMPLEMENT THE
NONDISCRIMINATION PRINCIPLE IN SECTION 252(I)**

[NPRM, paras. 269-272.] In its comments, CompTel demonstrated that the FCC should adopt rules and policies affirming that Section 252(i) constitutes a general anti-discrimination provision applicable to all carriers, not just “similarly-situated” carriers.¹¹⁹ The ILECs’ efforts to pare down Section 252(i) through numerous unwritten restrictions¹²⁰ should be rejected in strong terms. Further, the FCC should affirm that requesting carriers need not subscribe to an entire agreement, but may, as the statute requires, take any “interconnection service” or any “network element” from an existing agreement.¹²¹

**VII. THE COMMISSION’S INITIAL REGULATORY FLEXIBILITY
ACT ANALYSIS DOES NOT COMPLY WITH THE RFA**

The Office of Advocacy of the United States Small Business Administration (“SBA”) submits that the Commission’s NPRM fails to comply with the Regulatory Flexibility

¹¹⁸ CompTel Comments at 29-30 & 37-38.

¹¹⁹ CompTel Comments at 105-107.

¹²⁰ E.g., GTE Comments at 82.

¹²¹ See ALTS Comments at 54-55.

Act of 1980 ("RFA")¹²² in several significant respects. SBA maintains that the NPRM's requirement that comments on the RFA be submitted under a "separate and distinct heading designating them as responses to the [RFA analysis]," its decision to exclude all ILECs from the scope of the RFA, its silence on what reporting requirements the proposed rules may or may not impose on the entities covered by the RFA, and the lack of any discussion as to how any of its proposals is designed to minimize the impact on small businesses constitute material defects that render the NPRM violative of the RFA.¹²³ As written, the RFA forecloses procedural remedies for many small telecommunications carriers who will be fundamentally affected by the final rules adopted by the Commission.

¹²² Regulatory Flexibility Act of 1980, as amended, Pub. L. No. 96-354, 94 Stat. 1164 (1980), codified at, 5 U.S.C. 601 et seq.

¹²³ Office of Advocacy of the Small Administration Comments at 2-7.

Conclusion

For the foregoing reasons, CompTel respectfully submits that the FCC should adopt the statutory interpretations and implementing rules specified herein.

Respectfully submitted,

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May 30, 1996

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I, Michele A. Depasse, hereby certify that the foregoing "*Reply Comments of the Competitive Telecommunications Association*" was sent, this 30th day of May 1996, by U.S. first class mail, postage prepaid, to the following:

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